

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Assessment and Collection of
Regulatory Fees for Fiscal
Year 1995)
)
)
)
)

DOCKET FILE COPY ORIGINAL

MD Docket 95-3

**REPLY COMMENTS
OF
THE SMALL CABLE BUSINESS ASSOCIATION**

**RECEIVED
FEB 28 1995**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Eric E. Breisach
Christopher C. Cinnamon**

**HOWARD & HOWARD
107 W. Michigan Ave., Suite 400
Kalamazoo, Michigan 49007**

**Attorneys for the Small Cable
Business Association**

Dated: February 28, 1995

No. of Copies rec'd
List A B C D E

0+9

TABLE OF CONTENTS

I.	SUMMARY	1
II.	INTRODUCTION	3
III.	STEEP INCREASES IN CARS AND REGISTERED RECEIVE-ONLY SATELLITE DISH REGULATORY FEES PLACE UNAFFORDABLE, UNJUSTIFIED AND DISPARATE BURDENS ON SMALLER SYSTEMS AND THEIR SUBSCRIBERS	4
A.	All Three Regulatory Fees Paid By Cable Operators Have Increased Significantly	4
B.	The Proposed Regulatory Fees on CARS License and Earth Stations Detrimentially Impact Smaller Systems	5
1.	System Specific Costs	5
2.	Cost Pass-Throughs Are Not The Answer	6
3.	Exemptions or Relinquishment of Registrations Must be Permitted	7
IV.	CONCLUSION	8

I. SUMMARY

The Commission recently released its proposed 1995 regulatory fee schedule¹ containing significant fee increases for cable television operators. The National Cable Television Association ("NCTA") filed Comments in this Docket on February 13, 1995, citing many irregularities in the computation of these fees. The Small Cable Business Association ("SCBA") fully supports and urges the Commission to give full and careful considerations to the objections raised by NCTA. Moreover, SCBA files these reply comments to bring to the Commission's attention the harsh and disparate impact these regulations have on smaller cable systems.

In addition to the general per subscriber increase, the Commission has increased two fees that are incurred on a headend basis: (1) CARS licenses; and (2) registered receive only satellite dishes. The latter fees increased by 10,000 percent!² For smaller systems, the cost on a per-subscriber basis of the increase in regulatory fees is unconscionable. For example, a headend with only two such dishes³ will pay \$960 per annum in regulatory fees. For a system of 500 subscribers, that means the operator must pay almost \$2.00 per subscriber!

¹In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, *Notice of Proposed Rulemaking*, MD Docket No. 95-3 (Released January 12, 1995).

²The regulatory fee went from \$0.06 per dish (minimum fee of \$6.00 for up to 100 dishes) to \$120 per meter, with most dishes typically in the 4.5 - 5.0 meter range (resulting in a regulatory fee of \$600).

³We have assumed 5 meter dishes for illustrative purposes.

The blind imposition of such regulatory fees on smaller systems will result in financial hardship, either on the operator or its subscribers. If the Commission's response to these concerns is to take no action and let the proposed fee schedule take effect, the financial hardship will fall on the operator. If the Commission expands its external cost treatment of regulatory fees to include such amounts, the financial hardship will fall on consumers. Either way, the cost of providing cable television will go up needlessly for small systems because of this exorbitant increase in regulatory fees.

The Commission must either revise the level of fees it imposes for CARS and registered receive-only satellite dishes or it must exempt smaller systems from them.

II. INTRODUCTION

The Small Cable Business Association ("SCBA") is a self-help group formed by small cable operators faced with an unprecedented labyrinth of overwhelming regulations. SCBA's primary purpose is to help small operators learn, understand and implement the new requirements.

SCBA is less than two years old. Several small operators decided to meet in Kansas City on Saturday, May 15, 1993. Word of the meeting spread and one hundred operators attended. The Small Cable business Association was formed by the end of the day.

From these simple beginnings, SCBA has rapidly grown to over 370 members. More than half of them have fewer than 1,000 subscribers in total. SCBA continues its mission to educate and assist small operators using unpaid, volunteer leadership. SCBA has been very active in rulemakings such as the instant docket where substantial burdens are proposed for small system operators.

III. STEEP INCREASES IN CARS AND REGISTERED RECEIVE-ONLY SATELLITE DISH REGULATORY FEES PLACE UNAFFORDABLE, UNJUSTIFIED AND DISPARATE BURDENS ON SMALLER SYSTEMS AND THEIR SUBSCRIBERS.

A. All Three Regulatory Fees Paid By Cable Operators Have Increased Significantly.

Cable operators potentially pay three types of regulatory fees, all of which have increased significantly:

Type of Fee	1994 Amount ⁴	1995 Amount ⁵	Percent Increase
Per Subscriber	\$0.37	\$0.51	38%
CARS Licenses	\$220.00	\$305.00	39%
Earth Station ⁶	\$0.06	\$600.00	10,000%

These regulatory fees have all increased substantially. The validity of the amount of the increases has been effectively challenged in comprehensive comments filed by the National Cable Television Association ("NCTA")⁷. In the interest of avoiding redundancy on the record, SCBA incorporates the comments of NCTA by reference and affirms that it fully supports NCTA's analysis. This is particularly true with respect to the 10,000 percent increase in certain receive-only earth station regulatory fees.

⁴In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, MD Docket No. 94-19 (Released June 8, 1994).

⁵ In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, *Notice of Proposed Rulemaking*, MD Docket No. 95-3 (Released January 12, 1995).

⁶Assumes a dish of 5 meters in diameter.

⁷See *Comments* of the National Cable Television Association in this docket filed February 13, 1995.

B. The Proposed Regulatory Fees on CARS License and Earth Stations Detrimentially Impact Smaller Systems.

1. **System Specific Costs.** The CARS license and earth station fees are unique in that they are costs which are fixed for a particular cable system. For example, the types and number of satellite dishes is contingent upon the number and types of channels provided, not the number of subscribers. Many smaller systems rely on Cable Antenna Relay Service ("CARS") licenses to feed signals to headend or hub sites. The cost of a CARS license is similarly fixed on a per system basis and does not vary based on the number of subscribers.

It is essential that the Commission weigh the appropriateness of the new level of regulatory fees, particularly with respect to the CARS and earth station fees, as they relate to smaller systems. Such an analysis is not only appropriate, but it is mandated by the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"). Specifically, the Budget Act requires that the Commission adjust the fees to "take into account factors that are reasonably related to the benefits provided to the payor of the fee."⁸ Especially for smaller systems, any benefits received⁹ from FCC regulation of earth stations is out of all proportion to the cost of the regulatory fee.

The relevant cost measure for analysis of CARS and earth station registration fees is on a per subscriber basis. Apart from concerns about the unjustified level of any

⁸Budget Act at §9(b)(1)(A) (emphasis added).

⁹In reality, SCBA agrees with NCTA that little if any benefit is received from mere registration of receive-only earth stations. NCTA Comments at pp. 7-8.

increases, the *absolute* amount of the fees is out of all proportion with any perceived benefit. Consider the per subscriber cost of the earth station regulatory fee for a system with only two five meter dishes:

Number of Subscribers	Total Cost	Cost Per Subscriber
100	\$1,200	\$12.00
250	\$1,200	\$ 4.80
500	\$1,200	\$ 2.40
750	\$1,200	\$ 1.60
1,000	\$1,200	\$ 1.20
1,500	\$1,200	\$ 0.80
2,000	\$1,200	\$ 0.60
3,000	\$1,200	\$ 0.40
4,000	\$1,200	\$ 0.30
5,000	\$1,200	\$ 0.24

The Commission has missed the mark. No matter what approach is used, the cost to smaller cable systems far exceeds any "benefit" conferred by regulation.

2. Cost Pass-Throughs Are Not The Answer. Although a typical response to the concerns of smaller systems is to permit pass-through to subscribers of the higher regulatory fees, all this does is shift the burden directly to consumers of an improperly imposed regulatory fee. This is not to say that operators would not prefer a pass-through to no relief. Nevertheless, all a pass through does is raise the cost of cable to consumers, a price increase that injures cable's ability to provide competitively priced

services in the future.

3. Exemptions or Relinquishment of Registrations Must be Permitted.

While cable operators using CARS facilities cannot operate without a CARS licenses, many are reconsidering the value of having registered receive-only earth stations. These registrations are made once every ten years. We have been informed by Commission staff that the relevant measurement date for the imposition of regulatory fees is whether an earth station was registered on October 1, 1994. Consequently, even if operators withdraw their registrations, the amount of the regulatory fee will not be diminished for 1995. In the absence of any other Commission action to remedy the problems outlined in these comments, at a minimum, the Commission should waive any regulatory fees related to earth stations for which registration is withdrawn prior to the payment date of such fees.

IV. CONCLUSION

The Commission is proposing significant increases in regulatory fees. Two of those fees are incurred on a system basis and do not vary with the number of subscribers. Those two fees (CARS licenses and earth station registrations) impose significant burdens on smaller systems. The Commission needs to provide, as required by statute, for adjustments to the fees based on system size.

Respectfully submitted,

SMALL CABLE BUSINESS ASSOCIATION

By: 

Eric E. Breisach

Christopher C. Cinnamon

HOWARD & HOWARD

107 W. Michigan Ave., Suite 400

Kalamazoo, Michigan 49007

**Attorneys for the Small Cable Business
Association**